Supreme Court, U. S.
FILED
JUN 24 1980
MICHAEL RODAK, JR., CLERK

No. 79-1732

In the Supreme Court of the United States

OCTOBER TERM, 1979

TERRY WAYNE HILTON, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

WADE H. MCCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

In the Supreme Court of the United States

OCTOBER TERM, 1979

No. 79-1732

TERRY WAYNE HILTON, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIRST CIRCUIT

MEMORANDUM FOR THE UNITED STATES IN OPPOSITION

Petitioners contend that the boarding of their vessel on the high seas by Coast Guard officers for the purpose of making a safety and documentation check violated the Fourth Amendment.

1. After a jury trial in the United States District Court for the District of Maine, petitioners were convicted of conspiring to possess marijuana with intent to distribute it, in violation of 21 U.S.C. 846. Petitioners Hilton and Baggett were each sentenced to five years' imprisonment and a $5,000 fine. Petitioner Stover was sentenced to two and one half years' imprisonment and a $2,000 fine. In addition, each petitioner received a two-year special

parole term.[1] The court of appeals affirmed (Pet. App. 1a-12a).

Prior to trial the district court denied petitioners' motions to suppress evidence seized by Coast Guard authorities following the boarding of the vessel SOUTHERN BELLE on the high seas (469 F. Supp. 94). The pertinent evidence is recounted in the opinion of the court of appeals (Pet. App. 2a-5a). It showed that on May 23, 1978, the Coast Guard cutter DUANE was cruising on regular parol in the Gulf of Maine. At about 1:00 p.m., the DUANE observed on its radar a vessel later identified as the SOUTHERN BELLE. While the DUANE moved closer for a visual sighting, its crew plotted that the SOUTHERN BELLE was destined for Mount Desert Island, Maine.

About one hour after initial radar observation, the crew of the DUANE observed that the stern of the vessel bore the inscription "SOUTHERN BELLE, Wilmington, North Carolina." After further observation, the commander of the DUANE decided to send a boarding party to conduct a safety and documentation inspection. The factors he considered in making this decision included the absence of state registration numbers on the bow of the vessel, its geographical position in view of the recent foul weather, the fact that it was unusual for North Carolina vessels to be in Maine waters at that time of year, the appearance of persons on deck wearing foul weather gear

---

[1]Petitioners do not challenge the propriety of imposing a special parole term as part of a sentence for a narcotics conspiracy. In *Bifulco* v. *United States*, No. 79-5010 (June 16, 1980), this Court concluded that a special parole term may not be imposed upon a conviction for narcotics conspiracy. In light of the decision in *Bifulco*, petitioners may move the district court for correction of their sentences under Rule 35, Fed. R. Crim. P.

on a clear day, and the ship's course toward the coast of Maine.

A five-man party, including Lieutenant Paul Howard and Ensign Robert Watson, boarded the SOUTHERN BELLE at about 3:30 p.m., approximately 20 miles from the coast of the United States. The three petitioners were the only persons aboard the vessel. Upon inquiry, petitioner Baggett identified himself as the ship's master and produced a large packet of documents purporting to be the ship's registration papers. The officers were unable to determine from these papers whether the vessel was properly registered. Petitioner Baggett explained that the men aboard had been hired by the vessel's owner to sail the vessel to Bar Harbour, Maine.

The officers could not find a valid, current state registration or a valid federal registration. Suspecting that the vessel might be stolen, they decided to check the vessel's main beam number to see if the number engraved on the beam corresponded to the official registration number on the documents that petitioner Baggett had presented. At Lieutenant Howard's request petitioner Baggett escorted him into the engine room through a hatch in the cockpit area. Ensign Watson remained in the cockpit area looking through the hatch toward the living compartment in the direction Howard had gone. From this position Watson observed partially covered burlap bags that he suspected were bales of marijuana. Watson radioed the DUANE and requested an armed boarding party as reinforcements.

While in the engine room, Lieutenant Howard was unable to find the main beam number, but he did conduct a brief safety inspection. On his return to the cockpit, Howard also observed the burlap bags in the living compartment. After reaching the deck, Howard detected

the odor of marijuana. When the armed boarding party arrived, Howard asked the three petitioners about the bales, but they refused to answer. A field test of a sample from one of the bales registered positive for marijuana. The petitioners were then placed under arrest and the vessel was seized. Eventually, 234 bales of marijuana weighing more than six tons were found aboard the SOUTHERN BELLE.

2. Petitioners contend (Pet. 6-7) that the high seas boarding and subsequent search of the SOUTHERN BELLE violated their Fourth Amendment rights. Recently, in *Warren* v. *United States*, cert. denied, No. 79-6217 (May 19, 1980), and *Erwin* v. *United States*, cert. denied, No. 79-579 (Feb. 19, 1980), this Court declined to review the issue of the validity of a suspicionless boarding of a vessel by the Coast Guard for the purpose of a safety and documentation check. See also *Coats* v. *United States*, cert. denied, No. 79-1230 (Apr. 21, 1980). There is even less reason to grant review here, because this case does not involve the sort of unconstrained exercise of discretion that was present in *Delaware* v. *Prouse*, 440 U.S. 648 (1979), upon which petitioners rely.

In *Prouse*, the Court held that stopping an automobile and detaining the driver for a license and registration check are unreasonable under the Fourth Amendment absent articulable and reasonable suspicion that the motorist is unlicensed, the vehicle is unregistered, or that the vehicle and its driver are otherwise subject to seizure for violation of law. 440 U.S. at 663. Assuming arguendo that the standards established in *Prouse* are applicable to Coast Guard boardings of American vessels on the high seas (but see Pet. App. 10a-11a), they were satisfied here, since the boarding of the SOUTHERN BELLE was justified by facts amounting to reasonable suspicion, including the absence of state registration numbers on the

vessel's bow, its geographical position, its distance from its home port and the presence on deck of persons wearing foul weather gear on a clear day.[2]

Nor is there any reason to review the validity of the search of the vessel following its initial stop and boarding. The inspection of the vessel's main beam number was warranted by petitioners' failure to produce a valid federal or state registration. It is well settled that if, during the course of a lawful safety and documentation check, circumstances arise that generate probable cause to believe that a violation of United States law has occurred, the Coast Guard may search the vessel, seize evidence, and make arrests. See *United States* v. *Postal*, 589 F. 2d 862, 889-890 (5th Cir. 1979), cert. denied, No. 78-1714 (Oct. 1, 1979); *United States* v. *Odom*, 526 F. 2d 339, 342 (5th Cir. 1976). Here, no search was undertaken until after the officers had observed several burlap bags in plain view and had detected the distinctive odor of marijuana.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

WADE H. MCCREE, JR.
Solicitor General

JUNE 1980

---

[2]The instant case presents no conflict with *United States* v. *Piner*, 608 F. 2d 358 (9th Cir. 1979). There, it was held that because of the heightened "subjective intrusion," the Fourth Amendment is violated by random boardings conducted after dark. Here, the boarding was not random and occurred during daylight hours.